

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2006 AUG -2 A 10:25

RONG KAN, Plaintiffs, vs. IMMIGRATION AND NATURALIZATION SERVICE,	DISTRICT OF UTAH BY: DEPUTY CLERK ORDER ADOPTING REPORT AND RECOMMENDATION Case No. 2:06 CV 400 TC
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Plaintiff Rong Kan, who is proceeding *in forma pauperis* and is presently detained at the Utah State Prison in Gunnison, Utah, filed a Petition for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241, on May 15, 2006. Plaintiff's Petition challenges the April 8, 2005 Order of Removal issued by Defendant and alleges specifically that: (1) he is entitled to permanent resident status because he has children that are United States citizens; (2) the way the federal government is classifying his state crimes violates his due process and equal protection rights; and (3) he received ineffective assistance of counsel in his immigration proceedings.

On June 16, 2006, the matter was referred to United States Chief Magistrate Judge Samuel Alba pursuant to 28 U.S.C. § 636(b)(1)(B). It is now before the court on Defendant's Motion to Dismiss. On July 10, 2006, Judge Alba issued a Report and Recommendation in which he concluded that the court lacked jurisdiction over Plaintiff's Petition for a Writ of

Habeas Corpus under 8 U.S.C. § 1252 (a)(2)(D), which provides, in pertinent part, that: the sole and exclusive avenue for challenging a removal order is through "a petition for review filed with an appropriate court of appeals."

The parties were given ten days from the date of the Report and Recommendation to file objections, and were cautioned that failure to file an objection could constitute a waiver of those objections on subsequent appellate review. No objections were filed.

The court has conducted a *de novo* review of the issues and agrees with Judge Alba's recommendations. Accordingly, the Report and Recommendation is adopted as the order of this court. Defendant's motion to dismiss is GRANTED and this action DISMISSED without prejudice to it being re-filed in the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.

DATED this 1 day of July, 2006.

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BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge